

PUBLIC INVOLVEMENT

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

PROPOSED DELETIONS

1a. NOTE TO REVIEWERS: *DEP is proposing to delete 310 CMR 40.1403(2), which references the availability of Technical Assistance Grants (TAGs), in the Minimum Public Involvement Activities section. This 40.1403(2) is duplicative with 40.1452(6) and has created some confusion.*

40.1403: Minimum Public Involvement Activities in Response Actions

(1) Public Involvement Activities undertaken at all disposal sites are those designed primarily to provide the public with information regarding the risks posed by the disposal site, status of response actions, availability of technical assistance grants, and opportunities for public involvement.

(2) ~~The Department may make technical assistance grants available to applicants who meet the requirements of 310 CMR 40.1453 for the following disposal sites:~~

- ~~(a) any disposal site classified pursuant to 310 CMR 40.0500 or 40.0600;~~
- ~~(b) any site that is listed on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 et seq.; and~~
- ~~(c) any site that is deemed to be Adequately Regulated pursuant to 310 CMR 40.0110.~~

1b. NOTE TO REVIEWERS: *The proposed revision at 310 CMR 40.1406 eliminates the requirement to publish notices for Tier I disposal sites in the Environmental Monitor. This change reflects a determination made by the Massachusetts Environmental Policy Act Office in the Executive Office of Environmental Affairs that the other public involvement provisions of Subpart N provide adequate public notice of response actions at Tier I disposal sites.*

40.1406—Compliance with the Massachusetts Environmental Policy Act

~~To comply with the requirements of the Massachusetts Environmental Policy Act (MEPA) and 301 CMR 11.26(7)(g)2. and 3.:~~

~~(1) Notices shall be submitted for publication in the Environmental Monitor for all Tier I disposal sites. The notice shall announce the proposed classification or reclassification of any disposal site as Tier IA, Tier IB, or Tier IC pursuant to 310 CMR 40.0510. The notices shall be submitted to the Environmental Monitor prior to filing the applicable Tier I Permit Application with the Department, and a copy of such notice shall be included in the Permit Application.~~

~~(2) Additional notices shall be submitted for publication in the Environmental Monitor for all Tier IA and IB disposal sites. The notices shall announce the availability of the Phase III Remedial Action Plan as described in 310 CMR 40.0850, the Phase IV Remedial Implementation Plan (RIP) as described in 310 CMR 40.0870, and any Opinion(s) concerning the impacts of changes in Site Activities and Uses in accordance with 310 CMR 40.1080(1)(b).~~

- ~~(a) At Tier IA sites, the notice shall be submitted to the Environmental Monitor within seven days of the Department's approval of the applicable Phase Report or Opinion, and concurrently copied to the Department.~~

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

~~(b) At Tier IB sites, the notice shall be submitted to the Environmental Monitor within seven days of filing an LSP Opinion that the Report conforms with the applicable requirements of the Phase for which it was prepared, and concurrently copied to the Department, or an Opinion filed in accordance with 40.1080(1)(b).~~

~~(3) Each notice shall indicate how the document may be reviewed and shall describe the opportunities for public involvement in the response action. All notices submitted for publication in the Environmental Monitor shall be in a form prescribed by the Department.~~

1c. NOTE TO REVIEWERS: DEP proposes to revise 310 CMR 40.0703(8), 310 CMR 40.704(1), 310 CMR 40.0707(3), 310 CMR 40.0863(1), 310 CMR 40.0880(1), 310 CMR 40.0895(1), and 310 CMR 40.1303(1) to reflect the deletion of 310 CMR 40.1406 and the requirement for publishing notices in the Environmental Monitor for Tier I disposal sites. Please note, some references to 40.1406 have been retained because DEP is proposing new requirements under the 40.1406 citation.

40.0703: Requirements for All Tier I Permit Applications

(8) Public Notice Requirements

...

~~(g) Prior to the submission of an initial Tier I Permit application, or the submission of a Major Permit Modification application:~~

~~1. to upgrade the Tier I Permit Classification; or~~

~~2. to downgrade the Tier I Permit Classification to a Tier IB or a Tier IC;~~

~~each applicant or group of applicants shall also submit a notice for publication in the Environmental Monitor as required by 310 CMR 40.1406(1).~~

40.0704: Additional Application Submittal Requirements for Initial Tier I Permit Applications.

(1) Content of Application. In addition to the requirements in 310 CMR 40.0703, each Initial Tier I Permit application filed with the Department shall include the following:

(a) the Tier Classification Submittal required by 310 CMR 40.0500, including, without limitation, an LSP Tier Classification Opinion; and

(b) the Phase II Scope of Work or conceptual scope of work required by 310 CMR 40.0500; and

~~(d) a statement affirming that notice was submitted for publication in the Environmental Monitor as required by 310 CMR 40.703(8)(d), and a photocopy of such notice.~~

40.0707: Additional Application Submittal Requirement for Major Permit Modifications

...

(3) Content of Application. In addition to the requirements in 310 CMR 40.0703, an application for a Major Permit Modification shall include the following:

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

- (a) a description of the modification sought;
- (b) if the application is made to modify a Permit category or to reclassify a disposal site as Tier II, an LSP Tier Classification Opinion prepared in accordance with 310 CMR 40.0510(3);
- (c) if the application is made to modify permit terms or conditions, an LSP Opinion as to why the permit terms or conditions are no longer necessary or appropriate, including a report detailing any new or additional information to justify the modification(s) sought, if the application is to modify terms or conditions in a permit; and
- (d) each applicant's compliance history, as required by 310 CMR 40.0703(9)(b), since the effective date of his or her permit only; ~~and~~
- ~~(e) if the application was filed:~~
 - ~~1. to upgrade the Tier I Permit Classification; or~~
 - ~~2. to downgrade the Tier I Permit Classification to a Tier IB or a Tier IC;~~
- ~~a statement affirming that notice was submitted for publication in the Environmental Monitor as required by 310 CMR 40.0703(8)(g), and a photocopy of such notice.~~

40.0863: Public Involvement

- (1) Public Involvement Activities shall be conducted in accordance with 310 CMR 40.1400 through 40.1406. Public Involvement Activities relevant to Phase III specifically include, but are not limited to, those activities set forth in 310 CMR 40.1403(3)(e), ~~and may include, but are not limited to those activities set forth at 40.1406(2).~~

40.0880: Public Involvement

- (1) Public Involvement Activities shall be conducted in accordance with 310 CMR 40.1400 through 40.1406. Public Involvement Activities relevant to Phase IV specifically include, but are not limited to, 310 CMR 40.1403(3)(a) and (e), ~~and may include, but are not limited to those activities set forth at 310 CMR 40.1406(2).~~

40.0895: Public Involvement

- (1) Public Involvement Activities shall be conducted in accordance with 310 CMR 40.1400 through 40.1406. Public Involvement Activities relevant to Phase V specifically include, but are not limited to, those activities set forth in 310 CMR 40.1403(3)(e) and (f).

40.1303: Participation by the Public, RPs and PRPs

- (1) After the Department decides to establish an administrative record pursuant to 310 CMR 40.1300, and prior to the selection of a response action, the Department shall give notice and afford interested persons a reasonable opportunity to comment. Unless response actions must be taken earlier to control the potential for health damage, human exposure, safety hazards or environmental harm through appropriate short term measures, the Department shall give notice at least 21 days prior to its selection of a response action as follows:
- (a) by publication thereof in a newspaper(s) of general circulation in the community(ies) that the Department reasonably believes are affected by the disposal site;

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

~~(b) by publication thereof in the Environmental Monitor;~~

(eb) by certified mail, return receipt requested, to any person who the Department reasonably believes:

a1. is an RP or a PRP; or

b2. holds title to, or an ownership interest in, any real property which comprises the disposal site or which may be affected by the response action and whose name and address is known by the Department at the time the Department elects to establish such an administrative record;

(dc) if the disposal site is a Public Involvement Plan (PIP) Site, by first-class mail or hand-delivery to each person whose name and address appears on the PIP mailing list established in accordance with 310 CMR 40.1400; and

(ed) by first-class mail or hand delivery to the Chief Municipal Official and local board of health of each community in which the disposal site is known to be located.

USE OF ADVERTISEMENTS, LEGAL NOTICES AND WRITTEN NOTICES

2. NOTE TO REVIEWERS: *The revisions at 310 CMR 40.1403 require the use of advertisements in place of legal notices and will provide procedures for written notices, including the method of delivery and documentation required. A survey conducted by the Waste Site Cleanup Program found that the majority of respondents do not read legal notices and often find out about sites through the local news section of the local newspaper. Information provided by EPA indicates that local newspapers are more widely read than the major newspapers. In addition, community representatives have expressed interest in improved communication with the public about the existence of disposal sites.*

The proposed change would require the publication of an advertisement to appear in the local news section of a local newspaper that circulates in the community(ies) in which the disposal site is located, and in newspapers that circulate in any other communities that are, or are likely to be, affected by the disposal site. Legal notices may be used in place of an advertisement when the cost of the advertisement exceeds the cost of the legal notice by 20 percent or more, a local newspaper does not exist, or if a local newspaper refuses to publish the advertisement.

40.1403 Minimum Public Involvement Activities in Response Action

(1) Public Involvement Activities undertaken at all disposal sites are those designed primarily to provide the public with information regarding the risks posed by the disposal site, status of response actions, availability of technical assistance grants, and opportunities for public involvement.

(2) At a minimum, the following procedures shall be followed for written and public notices required under 310 CMR 40.1400:

(a) written notices shall be made either by hand-delivery or first-class mail, and the date of notification shall be:

1. if served by hand, the date when delivered:

a. personally to the person;

b. personally to any officer, employee, or agent of the person authorized by appointment of the person or by law to accept service; or

c. to an adult member of the person's household; or

2. if served by mail, the date of the postmark;

(b) public notices shall be made in a newspaper of general circulation in the community(ies) in which the disposal site is located and in newspapers of general

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

circulation in other communities which are, or are likely to be, affected by the disposal sites by:

1. publishing an advertisement in the local news section; or
2. publishing a legal notice, if the cost of an advertisement of comparable size exceeds the cost of a legal notice by 20% or more, or if the newspaper refuses to publish the advertisement; and

(c) written and public notices shall be documented to the Department according to the following:

1. written notices shall be concurrently copied to the Department; and
2. except as provided in 310 CMR 40.0703(1)(g), tearsheets from the newspapers containing the public notices with the date of publication and name of the newspaper, shall be submitted to the Department within seven (7) days of the date of publication.

3. NOTE TO REVIEWERS: *Proposed revisions to 310 CMR 40.0062(4), 310 CMR 40.0584(1), 310 CMR 40.0703(1) and (8), 310 CMR 40.0932(3), 310 CMR 40.1403(7)(b), and 310 CMR 40.1455(2) reflect the change to 310 CMR 40.1403(2) regarding the use of a public notice instead of a legal notice.*

40.0062: Procedures for Applying for Special Project Designation

...

(4) Public Review of Application. Upon issuance of a proposed decision to grant or deny a Special Project designation, the Department shall conduct a public comment period.

(a) Upon such issuance, the applicant shall publish a ~~legal-public~~ notice pursuant to 310 CMR 40.1403(2) of the proposed decision and its availability for public review and comment ~~in a newspaper which circulates in the community in which the project is located.~~ Such ~~legal-public~~ notice shall be in a form established by the Department and shall include information about how and where the public can review the application for Special Project designation and the deadline for submission of comments to the Department.

(b) At least three days prior to publication of the ~~legal-public~~ notice, the applicant shall deliver a copy of the notice by mail or hand to the Chief Municipal Officer and Board of Health in the community in which the project is located, and to the Department.

(c) The public comment period shall run for at least twenty (20) calendar days. Upon request or upon its own initiative, the Department may extend the public comment period.

40.0584: Participation by the Public, RPs, PRPs and Other Persons in Department Reclassification

(1) Within seven days of reclassifying a Tier Classified disposal ~~site~~ pursuant to 310 CMR 40.0583, the Department shall provide notice to the public ~~of the~~ Reclassification as follows:

(a) by publishing a ~~legal-public~~ notice pursuant to 310 CMR 40.1403(2) ~~in a newspaper which circulates in the community(ies) in which the disposal site is located and in any newspapers which circulate in any other community(ies) the Department believes are likely to be affected by the disposal site;~~

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

(b) by mail or hand delivery of a copy of the ~~legal-public~~ notice to the Chief Municipal Officer and Board of Health in the community(ies) in which the disposal site is located and in any other community(ies) which the Department believes are likely to be affected by the disposal site;

(c) by mail or hand delivery of a copy of the public notice to any person the Department reasonably believes:

1. is an RP or a PRP for the disposal site;
2. if applicable, is the permittee of a Tier Classified disposal site;
3. holds title to, or an ownership interest in any real property comprising the disposal site or portion thereof or which may be affected by the disposal site and whose name and address is known to the Department at the time the Department decides to re-classify the disposal site; and
4. is the operator of the disposal site, if different from the owner;

(d) if the disposal site is a Public Involvement Plan (PIP) site, by mail to each person whose name and address appears on the PIP mailing list established pursuant to 310 CMR 40.1400;

(2) Content of Notice. The notice required by 310 CMR 40.0584(1) shall include, but not be limited to, the following information:

- (a) the name and address of the disposal site;
- (b) the DEP Release Tracking Number(s), and the permit number;
- (c) the intended Reclassification category of the disposal site; and
- (d) a statement of the basis for the Reclassification.

40.0703: Requirements for All Tier I Permit Applications

All applicants for all Tier I Permits shall comply with the following requirements:

(1) Content of Application. Except as expressly provided by 310 CMR 40.0704 through 40.0707, each Tier I Permit application filed with the Department shall include, at a minimum, the following:

- (a) a completed Transmittal Form for Permit Application and Payment using the form established by the Department for such purposes;
- (b) the applicable, completed Permit Application form using the form established by the Department for such purposes;
- (c) the certifications required by 310 CMR 40.0009 and 40.0703(9)(a) and (10);
- (d) the applicable permit application fee payable under 310 CMR 4.00 (to be sent to DEP's Lockbox for payments);
- (e) a photocopy of the fee payment (to be included in the permit application);
- (f) the compliance history required by 310 CMR 40.0703(9)(b);
- (g) the tearsheet(s) from the newspaper(s) containing the ~~legal-public~~ notice required by 310 CMR 40.0703(8)(a)1., with the date of the publication and name of the newspaper;

....

(8) Public Notice Requirements.

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

(a) Prior to the submission of a Tier I Permit Application, each applicant or group of applicants shall take the following actions to provide notice to the public of the availability of a Tier I Permit Application for review and comment:

1. a ~~legal-public~~ notice ~~pursuant to 310 CMR 40.1403(2) shall be published in a newspaper that circulates in the community(ies) in which the disposal site is located and in any newspapers that circulate in any other community(ies) which is, or is likely to be, affected by the disposal site;~~ and
2. at least three days prior to publication of the ~~legal-public~~ notice, a copy of the notice shall be delivered by mail or hand to the Chief Municipal Officer and Board of Health in the community(ies) in which the disposal site is located and in any other community(ies) that is, or is likely to be, affected by the disposal site.

(b) The ~~legal-public~~ notice required by 310 CMR 40.0703(8)(a) shall be in a form established by the Department for such purposes and shall include, but not be limited to, the following information:

1. the name and address of the disposal site;
2. the DEP Release Tracking Number(s), and the permit number, if one has been assigned;
3. the name, address, and telephone number of the permit applicant(s);
4. the proposed Tier I Permit category of the disposal site, as determined in accordance with 310 CMR 40.0500;
5. the date on or about which the applicant(s) intends to file the application with the Department; ~~and~~
6. a description of the procedures by which interested persons may review and comment on the permit application; ~~and~~
7. a statement that public involvement opportunities are available under 310 CMR 40.1403(9) and, if the site is tier classified, under 310 CMR 40.1404.

(c) Interested persons may submit written comments related to a Permit Application within 21 days of the publication of the ~~legal-public~~ notice required by 310 CMR 40.0703(8)(a)1. Such written comments shall be submitted to the Department by mail or by hand delivery during normal Department business hours and to the Permit applicant.

40.0932: Identification of Applicable Groundwater Categories

...

(5) Notwithstanding the provisions of 310 CMR 40.0932(4):

...

(c) Case-Specific Designation of a Non-Potential Drinking Water Source Area.

...

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

2. The petitioner(s) shall provide a reasonable opportunity for public comment on the proposed petition. Such opportunity shall include but not be limited to:
- a. establishment of a specific period of time in which written public comment can be submitted to the person preparing the petition. Such comment period shall not be less than 30 calendar days;
 - b. a public meeting to be held within the public comment period for the purpose of hearing comments on the proposed petition. Such meeting shall be conducted at a time and place convenient to the public;
 - c. notice of the comment period and meeting shall be provided to:
 - i. the public [using a public notice pursuant to 310 CMR 40.1403\(2\)](#) in a newspaper of general circulation in the municipalities in the river basin in which the aquifer is located and which are hydrologically connected and downgradient to the area affected by the petition;
 - ii. the public in the *Environmental Monitor*;
 - iii. the public by posting the notice on a publicly accessible location in the municipal office and on any local access cable television station that serves the municipalities described in 310 CMR 40.0932(5)c.1.;
 - iv. the Chief Municipal Official(s) of (a) the municipality(ies) located within the boundaries of the river basin in which the groundwater is located and which are hydrologically connected and downgradient to the area affected by the petition, (b) municipalities abutting the municipality containing the area proposed to be designated as a Non-Potential Drinking Water Source Area; and (c) municipalities abutting the abutters;
 - v. any person with a currently effective contract with the municipality(ies) for sale or purchase of drinking water to or from the aquifer or portion thereof subject to the petition;
 - vi. any public water system providing water or operating a drinking water well within the municipality(ies) in which the groundwater is located and in downgradient municipalities in the subject aquifer; and
 - vii. any person holding a registration or permit under the Water Management Act (MGL c. 21G) for withdrawal of water from the aquifer or portion thereof subject to the petition.

40.1403: Minimum Public Involvement Activities in Response Actions

...

(7) Within thirty days after recording and/or registering any original, amended, released or terminated Activity and Use Limitation pursuant to 310 CMR 40.1070 through 40.1080, the following requirements shall be met to inform local officials and the public of the limitations which apply to activities and/or uses of the property subject to the Activity and Use Limitation:

- (a) a copy of the recorded and/or registered Activity and Use Limitation shall be provided to:
1. the Chief Municipal Officer;
 2. the Board of Health;
 3. the Zoning Official; and
 4. the Building Code Enforcement Official in the community(ies) in which the property subject to such Activity and Use Restriction is located.

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

(b) a ~~legal-public~~ notice which indicates the recording and/or registering of the original, amended, released or terminated Activity and Use Limitation shall be published in a newspaper which circulates in the community(ies) in which the property subject to the Activity and Use Limitation is located.

1. This notice shall be in a form established by the Department for such purpose and shall include, but not be limited to:
 - a. the name, address, and Release Tracking Number(s) of the disposal site associated with the Activity and Use Limitation;
 - b. the type of Activity and Use Limitation;
 - c. information about where the Activity and Use Limitation instrument and disposal site file can be reviewed; and
 - d. the name, address and telephone number of the person recording and/or register-ing the Activity and Use Limitation from whom the public can obtain additional information.
2. A copy of this ~~legal-public~~ notice shall be submitted to the Department within seven days of its publication.

40.1450: Technical Assistance Grants

40.1455: Notice Provisions

(1) For each funding round, the Department shall publish a notice in the Environmental Monitor announcing the availability of grants, application procedures and deadlines. The availability of grants shall also be announced by the Department with any List of Disposal Sites published pursuant to 310 CMR 40.1068.

(2) Information about the availability of technical assistance grants shall also be published by the person(s) responsible for the conduct of the response action at the disposal site as part of other ~~legal-public~~ notices published pursuant to this Contingency Plan.

PROPERTY OWNER'S RIGHT TO SAMPLING RESULTS

4. NOTE TO REVIEWERS: *Revisions proposed to 310 CMR 40.0017(6) and 310 CMR 40.1403(10) would require that owners be informed of the opportunity to acquire the results of analyses (such as field screening or laboratory analyses) of environmental sample(s) obtained from their property as part of an investigation of a release of oil and/or hazardous material. If the property owner requests the sampling results, then the party conducting the response actions would be required to provide the sampling data within 30 days of receiving the request or within 15 days of the receiving sampling data from the laboratory, whichever is later. Although many parties conducting response actions currently provide sampling results to property owners, this practice is not consistent. The change is intended to be broad enough to include prior agreements (such as access agreements) that the parties may enter into.*

40.0017: Environmental Sample Collection and Analyses

...

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

(6) Any time environmental samples are taken at a property by a person(s) conducting response action(s), other than on behalf of the owner or operator of the property, the person(s) conducting the response action(s) shall comply with the notification provisions of 310 CMR 40.1403(10).

40.1403: Minimum Public Involvement Activities in Response Actions

...

(10) Unless otherwise agreed upon, any time environmental samples are taken other than on behalf of the owner or operator of the property, the person(s) conducting the response actions shall:

(a) provide the property owner with a written notice pursuant to 310 CMR 40.1403(2) and on a form established by the Department for such purposes, if one exists, stating the property owner's right to obtain the results of the sample analyses upon making a written request to the person(s) conducting response actions, in accordance with the following deadlines:

1. as soon as possible, but no more than seven (7) days after the date of sampling, when conducted as part of an Immediate Response Action to address releases defined at 310 CMR 40.0311; or
2. prior to the date of sampling when conducted as part of any other response actions; and

(b) upon receipt of a written request from the property owner and within thirty (30) days of such request or within fifteen (15) days of the date the sample results are issued by the laboratory, whichever is later, provide the property owner with:

1. the results of the sample analyses and any other documentation associated with the samples, such as that listed at 310 CMR 40.0017(3); and
2. a statement that public involvement opportunities are available under 310 CMR 40.1403(9) and, if the site is tier classified, under 310 CMR 40.1404; and

(c) the person(s) conducting the response actions shall provide the results of any sampling subject to the notice requirements of 310 CMR 40.1403(10) to the Department with the next required submittal.

PROVIDING LOCAL OFFICIALS WITH COPIES OF THE RELEASE NOTIFICATION FORM (RNF)

5. NOTE TO REVIEWERS: *Revisions at 310 CMR 40.1403(3) and 310 CMR 40.0371(3) would require the person(s) conducting response actions to provide copies of the release notification form (RNF) that is submitted to DEP, to the Chief Municipal Officer(s) and the Board of Health(s) of the community(ies) where the release occurred and to include the local assessor's map and parcel numbers showing the location of the site. Local officials have suggested that the RNF provides more useful information at an earlier stage than the Notice of Responsibility (NOR), a copy of which they currently receive from DEP.*

40.1403: Minimum Public Involvement Activities in Response Actions

...

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

(3) At any time after the Department has been notified of a release or threat of release pursuant to 310 CMR 40.0300, the Chief Municipal Officer and Board of Health in the community(ies) in which the disposal site is located and in any other communities which are, or are likely to be, affected by the disposal site shall be notified of:

...

(h) the submittal of a Release Notification Form to the Department pursuant to 310 CMR 40.0371, except where a Release Notification Form for the disposal site was previously provided to the Chief Municipal Officer and Board of Health, and the release or threat of release that is the subject of the subsequent notification to the Department is consistent with the release or threat of release for which notification was previously provided to the Chief Municipal Officer and Board of Health.

1. Notification shall consist of a written notice pursuant to 310 CMR 40.1403(2) accompanied by:

- a. a copy of the Release Notification Form;
- b. the street address and the local assessor's map number and parcel number of the property(ies) where the release(s) or threat of a release(s) is located; and
- c. a statement of the local municipal officials' right to request additional Public Involvement Activities under 310 CMR 40.1403(9) and upon tier classification under 310 CMR 40.1404.

2. Notification shall be provided no later than seven (7) days after sending the Release Notification Form to the Department pursuant to 310 CMR 40.0371.

40.0371: Release Notification Form

...

(3) Persons required to notify of a release(s) or threat(s) of release(s) shall also provide a copy of the Release Notification Form to Chief Municipal Officer and the Board of Health in accordance with 310 CMR 40.1403(3)(h).

PROVIDING NOTICE TO THE OWNERS AND OCCUPANTS OF AFFECTED PROPERTIES OF IMMEDIATE RESPONSE ACTIONS TO ADDRESS AN IMMINENT HAZARD OR CRITICAL EXPOSURE PATHWAY

6. NOTE TO REVIEWERS: *Revisions at 310 CMR 40.1403(11) and 310 CMR 40.0411(8) require persons conducting an Immediate Response Action to address an Imminent Hazard or a Critical Exposure Pathway to inform owners and occupants of affected properties of the remedial action. The visibility of the remedial action often prompts questions and concerns from occupants of multi-family dwellings, and commercial and industrial buildings. These changes are intended to improve communication with citizens potentially affected by disposal sites by providing direct notice to occupants and owners of affected property.*

40.1403: Minimum Public Involvement Activities in Response Actions

...

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

(11) Any person conducting a remedial action as part of an Immediate Response Action to prevent, control, or eliminate an Imminent Hazard pursuant to 310 CMR 40.0322 and 310 CMR 40.0426 or to address a Critical Exposure Pathway pursuant to 310 CMR 40.0414(3) through (4) shall notify the owners and/or operators of the property(ies) where the Immediate Response Action is being conducted and, except as provided below, all other persons who are reasonably believed to be Affected Individuals, as defined in 310 CMR 40.0006.

(a) Notification shall be made orally or in writing as soon as possible but not later than forty-eight (48) hours after commencement of the remedial action;

(b) Oral notifications shall be followed by a written notice pursuant to 310 CMR 40.1403(2) within seven (7) days of the oral notification;

(c) Written notices shall include information about the purpose, nature and expected duration of the remedial action, and a statement of the Public Involvement Activities available under 310 CMR 40.1403(9) and, if the site is tier classified, under 310 CMR 40.1404; and

(d) For multi-unit structures or industrial and commercial buildings, written notices shall be provided to owners and/or operators of the property(ies) in a form that may be easily posted where it will be visible to occupants of such building, and shall request that the notice be posted in the building and provided to other individuals who are routinely present in the building (e.g., employees).

40.0411: General Provisions for Immediate Response Actions

...

(8) RPs, PRPs or Other Persons conducting an Immediate Response Action that involve a remedial action(s) to prevent, control, or eliminate an Imminent Hazard or address a Critical Exposure Pathway shall comply with the provisions of 310 CMR 40.1403(11) for notifying the owner(s) and occupant(s) of affected property(ies).

PROVIDING NOTICE TO OWNERS OF PROPERTIES THAT ARE LOCATED WITHIN THE DELINEATED DISPOSAL SITE

7. NOTE TO REVIEWERS: Revisions proposed at 310 CMR 40.1406 would require that written notices be provided to property owners of the information indicating that their property is within the boundaries of a disposal site. Although DEP currently receives this information, property owners frequently receive such notice only when the person(s) conducting response action(s) need to access their property to collect samples or conduct remedial actions.

The proposed revision would require that the person conducting response actions at the disposal site inform property owners of the inclusion of their property within the disposal site boundaries upon submittal of the Phase II Report or Response Action Outcome Statement, whichever is sooner. Until a Phase II is completed, sufficient information may not be available to define the boundaries of the disposal site and to provide impacted property owners with specific information about exposure, risk, and planned response actions. However, DEP is interested in comments on whether there are other points during the cleanup process at which this notification might be appropriate.

The intent of this proposal is to inform property owners about the impact of a release on their property to enable them to make informed decisions about potential risks posed. The Department does not intend

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

that this notice should affect a property owner's right to sue for damages under c. 21E, §11A and common law. In combination with other information a property owner receives or knows, the statute of limitations could begin to run on such claims. The Supreme Judicial Court recently clarified what level of knowledge a property owner must possess for the statute of limitations to be triggered under these causes of action (Taygeta Corporation v. Varian Associates, Inc., March 7, 2002). In general, a property owner's claim under c.21E does not begin until he has "actual knowledge" of contamination and knows the cause of the contamination, or the person liable.

40.1406: Notification to Owners of Property within the Boundaries of a Disposal Site

(1) Any person(s) conducting response action(s) at a disposal site shall provide written notice on a form provided by the Department, if one exists, and in accordance with the requirements of 310 CMR 40.1403(2) to the owner(s) of property(ies) within the boundaries of the disposal site, as depicted on the disposal site map pursuant to 310 CMR 40.0835(4)(b) or 310 CMR 40.1056(2)(a), that said property(ies) (or a portion of the property(ies)) is within the disposal site boundaries. The person(s) conducting the response action(s) at the disposal site shall:

(a) provide the following information with the written notice:

1. a copy of the disposal site map prepared pursuant to 310 CMR 40.0835(4)(b) or 310 CMR 40.1056(2)(a) showing the boundaries of the disposal site;
2. a copy of the conclusions prepared pursuant to 310 CMR 40.0835(4)(i) or 310 CMR 40.1000;
3. a statement that Public Involvement Activities are available under 310 CMR 40.1400;
4. the name, address and telephone number of a contact person representing the person(s) conducting the response action(s) who may be contacted for additional information on the disposal site;
5. a statement that the notice is being provided to the Department; and
6. a statement that recipients may want to consult their own environmental professional;

(b) make such written notice no later than the date of receipt by the Department of the Phase II Report, pursuant to 310 CMR 40.0835, or the Response Action Outcome Statement for the disposal site, pursuant to 310 CMR 40.1000, whichever is submitted sooner; and

(c) if the number of property owners to receive the written notices exceeds fifty (50), provide public notice to property owners only after the Board of Health(s) in the community(ies) in which the properties are located and the Department receive such written notice.

(2) Any person(s) conducting the response action(s) who made written notice to a property owner(s) pursuant to 310 CMR 40.1406(1) who later determines as the result of an additional response action(s) that a property is no longer within the boundaries of the disposal site shall make written notice to said property owner(s) within thirty (30) days of receiving the additional information upon which such a determination is based. Such written notice shall include:

(a) the basis of the determination,

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

- (b) an updated copy of the disposal site map prepared pursuant to 310 CMR 40.0835(4) or 310 CMR 40.1056(2)(a) showing the revised boundaries of the disposal site, and
- (c) a statement explaining how to obtain additional documentation that supports the determination.

PROVIDING NOTICE TO OWNERS OF PROPERTIES THAT ABUT A DELINEATED DISPOSAL SITE

8. NOTE TO REVIEWERS: *The proposal at 40.1407 would require notice to abutters of a delineated disposal site. Such notice would be in addition to the notice to property owners within the boundaries of the disposal site proposed at 40.1406.*

The intent of this proposal is to provide owners of properties that abut disposal sites notice of contamination that may potentially impact their property if timely and adequate response actions are not taken and/or access to additional information about response actions occurring and conditions present at the neighboring disposal site.

40.1407: Notification to Owners of Property that Abut a Disposal Site

(1) Any person(s) conducting response action(s) at a disposal site shall provide written notice on a form provided by the Department, if one exists, and in accordance with the requirements of 310 CMR 40.1403(2) to the owner(s) of property(ies) that abut the boundaries of the disposal site, as those boundaries are depicted on the disposal site map pursuant to 310 CMR 40.0835(4)(b) or 310 CMR 40.1056(2)(a). Where the boundaries of the disposal site abut a Public Way, such notice shall be provided to the owner(s) of the next abutting property(ies). The person(s) conducting the response action(s) at the disposal site shall:

(a) provide the following information with the written notice:

1. a copy of the disposal site map prepared pursuant to 310 CMR 40.0835(4)(b) or 310 CMR 40.1056(2)(a) showing the boundaries of the disposal site in relation to the abutting property(ies);
2. a copy of the conclusions prepared pursuant to 310 CMR 40.0835(4)(i) or 310 CMR 40.1000;
3. a statement that Public Involvement Activities are available under 310 CMR 40.1400;
4. the name, address and telephone number of a contact person representing the person(s) conducting the response action(s) who may be contacted for additional information on the disposal site;
5. a statement that the notice is being provided to the Department; and
6. a statement that recipients may want to consult their own environmental professional.

(b) make such written notice no later than the date of receipt by the Department of the Phase II Report, pursuant to 310 CMR 40.0835, or the Response Action Outcome Statement for the disposal site, pursuant to 310 CMR 40.1000, whichever is submitted sooner; and

(c) if the number of property owners to receive the written notices pursuant to 310 CMR 40.1407 exceeds fifty (50), provide public notice to property owners only after

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

the Board of Health(s) in the community(ies) in which the properties are located and the Department receive such written notice.

(2) Any person(s) conducting the response action(s) who made written notice to an owner(s) of a property(ies) that abuts a disposal site pursuant to 310 CMR 40.1407(1) who later determines as the result of an additional response action(s) that such property does not abut the boundaries of the disposal site shall make written notice to said abutting property owner(s) within thirty (30) days of receiving the additional information upon which such a determination is based. Such written notice shall include:

(a) the basis of the determination,

(b) an updated copy of the disposal site map prepared pursuant to 310 CMR 40.0835(4) or 310 CMR 40.1056(2)(a) showing the revised boundaries of the disposal site, and

(c) a statement explaining how to obtain additional documentation that supports the determination.

9. NOTE TO REVIEWERS: *Revisions at 310 CMR 40.0590, 310 CMR 40.0839, and 310 CMR 40.1090(1) reference the proposed notification provisions of 310 CMR 40.1406.*

40.0590: Public Involvement

Public involvement activities shall be conducted in accordance with 310 CMR 40.1400 through 40.1406. Public involvement requirements relevant to Tier Classification include, but are not limited to, those activities set forth at 310 CMR 40.1403(6) and 40.1406~~(3)~~.

40.0839: Public Involvement

(1) Public Involvement Activities shall be conducted in accordance with 310 CMR 40.1400 through 40.1406. Public Involvement Activities relevant to Phase II specifically include 310 CMR 40.1403(3)(e), and may include, but are not limited to those activities set forth at 40.1403(3)(a) and (f) and 310 CMR 40.1406.

40.1090: Public Involvement Requirements

(1) Public Involvement Activities shall be conducted in accordance with 310 CMR 40.1400 through 40.1406. Public Involvement Activities relevant to Response Action Outcome Opinions specifically include 310 CMR 40.1403(3)(f) and may include, but are not limited to, those activities set forth at 310 CMR 40.1403(7) and (8) and 310 CMR 40.1406.

PROPOSED REVISIONS TO THE PUBLIC INVOLVEMENT ACTIVITIES FOR TIER I PERMIT APPLICATIONS

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

10. NOTE TO REVIEWERS: *DEP proposes to revise 310 CMR 40.0703(8) to require notification to the owner(s) of a public water supply (PWS) informing them of disposal sites with groundwater contamination that are within the PWS resource area. These changes are consistent with the DEP Bureau of Resource Protection, Water Supply Division's Source Water Assessment Project (SWAP) and are intended to assist PWS owners in their resource protection planning efforts. DEP also proposes to delete references to section 310 CMR 40.1406 that require publication of notices in the Environmental Monitor for Tier I disposal sites to reflect the deletion of 310 CMR 40.1406, described previously. In addition, the proposal references the new provisions of 310 CMR 40.1403(2) regarding the procedures for public notices.*

40.0703: Requirements for All Tier I Permit Applications.

...

(8) Public Notice Requirements.

(a) Prior to the submission of a Tier I Permit Application, each applicant or group of applicants shall take the following actions to provide notice to the public of the availability of a Tier I Permit Application for review and comment:

1. provide a legal-public notice pursuant to 310 CMR 40.1403(2) shall be published in a newspaper that circulates in the community(ies) in which the disposal site is located and in any newspapers that circulate in any other community(ies) which is, or is likely to be, affected by the disposal site; and
2. provide at least three days prior to publication of the legal notice, a copy of the public notice shall be delivered by mail or by hand to the Chief Municipal Officer(s) and Board of Health(s) in the community(ies) in which the disposal site is located and in any other community(ies) that is, or is likely to be, affected by the disposal site, at least three (3) days prior to publication of the public notice; and
3. if the Tier I Permit application is for a site that meets the requirements specified at 310 CMR 40.0520(2)(a)1. or a site with groundwater contamination within the Zone A of a Class A surface drinking water source that exceeds GW-1 standards, at least three (3) days prior to publication of the public notice, the applicant(s) shall provide the owner(s) of the Public Water Supply with a written notice pursuant to 310 CMR 40.1403(2) that includes:
 - a. a copy of the public notice; and
 - b. a copy of the disposal site map included in the Phase I report pursuant to 310 CMR 40.0483(1)(b).

(b) The ~~legal-public~~ notice required by 310 CMR 40.0703(8)(a) shall be in a form established by the Department for such purposes, if one exists, and shall include, but not be limited to, the following information:

1. the name and address of the disposal site;
2. the DEP Release Tracking Number(s), and the permit number, if one has been assigned;
3. the name, address, and telephone number of the permit applicant(s);
4. the proposed Tier I Permit category of the disposal site, as determined in accordance with 310 CMR 40.0500;
5. the date on or about which the applicant(s) intends to file the application with the Department; and

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

6. a description of the procedures by which members of the public may review and comment on the permit application.

...

~~(f) The notifications required by 310 CMR 40.0703(8)(a) may be included with the notifications required by 310 CMR 40.1403(6) for purposes of compliance with these subsections.~~

~~(g) Prior to the submission of an initial Tier I Permit application, or the submission of a Major Permit Modification application:~~

- ~~1. to upgrade the Tier I Permit Classification; or~~
 - ~~2. to downgrade the Tier I Permit Classification to a Tier IB or a Tier IC;~~
- ~~each applicant or group of applicants shall also submit a notice for publication in the Environmental Monitor as required by 310 CMR 40.1406(1).~~

ADDITIONAL PROPOSED REVISIONS TO 310 CMR 40.1400 PUBLIC INVOLVEMENT – GENERAL APPROACH FOR RESPONSE ACTIONS

11. NOTE TO REVIEWERS: *New language will be added at 310 CMR 40.1160(5) to clarify that the provisions of 310 CMR 40.1400 apply to any response actions that may be conducted under an Audit Follow-Up Plan pursuant to 310 CMR 40.1160.*

40.1160: Audit Follow-up Plans

...

(5) Public Involvement Activities required for Audit Follow-up Plans shall be conducted in accordance with 310 CMR 40.1400. If the disposal site where an Audit Follow-up Plan is being implemented is a designated Public Involvement Plan site, then a Public Involvement Plan shall be implemented by the person conducting response actions at that site pursuant to 310 CMR 40.1405.

40.1403: Minimum Public Involvement Activities in Response Actions

...

(3) At any time after the Department has been notified of a release or threat of release pursuant to 310 CMR 40.0330, the Chief Municipal Officer and Board of Health ... shall be notified of:

...

(i) additional remedial actions conducted as part of an Audit Follow-up Plan pursuant to 310 CMR 40.1160.

12. NOTE TO REVIEWERS: *Revisions proposed at 310 CMR 40.1403(3) are intended to clarify that notifications to local officials required before certain field activities begin are not meant to be duplicative of the notices sent to local officials before RAMs and IRAs for imminent hazards are implemented. The proposed revisions clarify that if local officials are notified of an IRA or RAM, then another notification about associated field work is not required. In addition, DEP proposes to revise 310 CMR 40.1403 to clarify that local officials may request and obtain copies of documents from the person(s) conducting the response actions.*

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

Revisions are also proposed at 310 CMR 40.1403(3) to allow local officials to receive the “summary of findings and statement of conclusions” section of phase reports in place of the “notices of availability” they now receive.

Currently, 310 CMR 40.1403(3)(d) requires that local officials be notified at least 7 days prior to the implementation of a RAM. Recent revisions at 310 CMR 40.0443 eliminated the 21-day presumptive approval for RAMs (and hence, allow RAMs to commence immediately upon the filing of the plan). In light of that change, the 7-day prior notice to local officials is the time limiting requirement on implementing RAMs. Is it appropriate to change this notice to a shorter timeframe, such as 3 days prior to the implementation of the RAM? Another possibility is to revise the current language by replacing “at least” with “within” – “notification shall be made within seven days prior to implementation of the Release Abatement Measure Plan” – allowing the notification to be made at the time the RAM is implemented, but eliminating the risk of the notification being made too far in advance.

In addition, revisions are proposed at 310 CMR 40.0703(8)(c) to require written comments related to a Permit Application to be submitted within 20 days rather than the current 21 days. This change will make the comment period for Tier I disposal sites consistent with the comment period for Tier II disposal sites.

40.1403: Minimum Public Involvement Activities in Response Actions

...

(3) At any time after the Department has been notified of a release or threat of release pursuant to 310 CMR 40.0300, the Chief Municipal Officer and Board of Health in the community(ies) in which the disposal site is located and in any other communities which are, or are likely to be, affected by the disposal site shall be notified of:

(a) the purpose, nature and expected duration of any field work related to the response action involving the implementation of Phase IV remedial actions pursuant to 310 CMR 40.0870; the use of respirators and other protective clothing (Level A, B or C as defined by "Standard Operating Safety Guides" published by the U.S. Environmental Protection Agency); or any sampling involving private drinking water supply wells, indoor air or surficial soils at any residential property at, adjacent to, or down-gradient from any contamination or suspected contamination from a release or threat of release.

1. Notification shall be made at least three days prior to the commencement of such field work.

2. Notification shall be based on plans for the field work, including the expected level of protection for site workers. If the level of protection for site workers is upgraded during the course of the work to Level C or above, the Chief Municipal Officer and Board of Health shall be notified of the upgrade as soon as is practicable.

3. Notification of field work is not required for Immediate Response Actions undertaken to address releases of oil and/or hazardous material as defined in 310 CMR 40.0311(1) through (9), or for Release Abatement Measures, when advance notice for these actions is provided pursuant to 310 CMR 40.1403(3)(b) and (d).

(b) the implementation of any Immediate Response Action taken to prevent, control, abate or eliminate an Imminent Hazard as required in 310 CMR 40.0322 and 40.0426 or to address a Critical Exposure Pathway as defined in 310 CMR 40.0006.

1. Notification shall include information about the purpose, nature and expected duration of the Immediate Response Action.

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

2. Notification shall be made as soon as feasible, but in all cases notification shall be made no later than 48 hours following implementation of the Immediate Response Action.
- (c) the availability of all Completion Reports Statements required for Immediate Response Actions taken to prevent, control, abate or eliminate Imminent Hazards pursuant to 310 CMR 40.0427.
 1. Notification may take the form of copies of correspondence, which contain or summarize the Completion Report Statement, or a notice of the availability of the Completion Report Statement.
 2. Notification shall include information about how local officials may obtain a copy of the Completion Report Statement from the person(s) conducting the response action(s).
- (d) the implementation of any Release Abatement Measure.
 1. Notification shall include information about the purpose, nature and expected duration of the Release Abatement Measure.
 2. Notification shall be made at least within seven (7) days prior to the implementation of the Release Abatement Measure Plan.
- (e) the availability of the Phase I Initial Site Investigation Report required pursuant to 310 CMR 40.0480, and ~~all each~~ subsequent Phase Reports required pursuant to 310 CMR 40.0800. Notification ~~may~~ shall take the form of ~~copies of correspondence which contain or summarize decisions regarding the Report, or a notice of the availability of the Report~~ a copy of the summary of findings and statement of conclusions, as provided in 310 CMR 40.0483(h), 40.0835(4)(i), 40.0852(5), or for Phase IV, a copy of the description of the Comprehensive Remedial Action provided in the Remedy Implementation Plan pursuant to 310 CMR 40.0874(3)(b)5. and 40.0874(3)(b)10., or for Phase V, a copy of the Phase V Completion Statement Form, and shall include information about how local officials may obtain a copy of the Report from the person(s) conducting the response action(s).
- (f) the availability of any Response Action Outcome Statements filed pursuant to 310 CMR 40.1000.
 1. Notification may take the form of copies of correspondence which contain or summarize decisions regarding the Statement or a notice of the availability of the Statement.
 2. Notification shall include information about how local officials may obtain a copy of the Statement from the person(s) conducting the response action(s); ~~and~~
- (g) the availability of any Downgradient Property Status Submittal and/or modification of Downgradient Property Status Submittal provided to the Department pursuant to 310 CMR 40.0180. Notification shall include information about how local officials may obtain a full copy of the Downgradient Property Status Submittal and/or Modification of Downgradient Property Status Submittal from the person(s) conducting the response action(s).

40.0703: Requirements for All Tier I Permit Applications

All applicants for all Tier I Permits shall comply with the following requirements:

....

- (8) Public Notice Requirements.

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

(a) Prior to the submission of a Tier I Permit Application, each applicant or group of applicants shall take the following actions to provide notice to the public of the availability of a Tier I Permit Application for review and comment:

...

(c) Interested persons may submit written comments related to a Permit Application within 21-20 days of the publication of the ~~legal-public~~ notice required by 310 CMR 40.0703(8)(a)1. Such written comments shall be submitted to the Department by mail or by hand delivery during normal Department business hours and to the Permit applicant.

13. NOTE TO REVIEWERS: *DEP proposes to revise 310 CMR 40.1403(6) to provide a public comment period for the documentation packages for Tier II Classifications, analogous to that now available for the documentation packages for Tier I Permit applications (310 CMR 40.0703(8)). In addition, DEP proposes to revise 310 CMR 40.1403(6) to provide for inclusion of a copy of the Phase I site map with the Tier Classification notification sent to local officials. This change is intended to improve communication with local officials about the location of disposal sites in their communities. These changes will increase the potential that persons conducting response actions will become aware of information that may impact the Tier II classification (such as the presence of private wells), thus increasing public confidence in cleanups at Tier II sites.*

40.1403: Minimum Public Involvement Activities in Response Actions

...

(6) Following Tier Classification or reclassification pursuant to 310 CMR 40.0510 or 310 CMR 40.0530, respectively, the person(s) conducting the response action(s) shall undertake the following actions ~~shall be taken~~ to inform the public about the status of the disposal site's classification:

(a) within seven (7) days of filing a Tier II Classification Submittal, a ~~legal-public~~ notice pursuant to 310 CMR 40.1403(2) which indicates the classification or reclassification of the disposal site shall be published in a form established by the Department for such purpose, and shall include:

1. an announcement of a twenty (20) day comment period;

2. a description of the procedures by which members of the public may obtain a copy of the Tier Classification and its supporting documentation and submit comments thereof;

3. a statement of the Public Involvement Activities available under 310 CMR 40.1403(9) and, if the site is tier classified, under 310 CMR 40.1404; and

4. contact information for the person(s) conducting response actions, including the person's name, address, and telephone number;

~~in a newspaper which circulates in the community(ies) in which the disposal site is located and in newspapers which circulate in any other communities which are, or are likely to be, affected by the disposal site;~~

(b) at least three (3) days prior to publication of the ~~legal notice~~ public notice, a written notice pursuant to 310 CMR 40.1403(2) ~~copy of the notice~~ shall be sent to the Chief Municipal Officer(s) and the Board of Health(s) in the community(ies) in

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

which the disposal site is located and in any other communities which are, or are likely to be, affected by the disposal site, and shall include:-

1. a copy of the public notice; and
2. a copy of the disposal site map included in the Phase I report pursuant to 310 CMR 40.0483(1)(b); and

~~If the Department does not publish the legal notice, then a copy of the legal notice which includes the date of publication and the name of the newspaper, and a copy of the cover letter to the Chief Municipal Officer and Board of Health, shall be submitted to the Department within seven days of publication of the legal notice; and~~

(c) for Tier I disposal sites, ~~the notifications required by 310 CMR 40.1403(6) may be included with the notifications required by 310 CMR 40.0703(8), provided that an Initial Permit Application or Major Permit Modification is filed concurrently with the Tier Classification Submittal. A separate legal a public~~ notice of a classification or reclassification determination made as part of a determination concerning an Initial Tier I Permit or a Major Permit Modification ~~is not required if the legal notice requirement of shall be made pursuant to 310 CMR 40.0703(8), has been met.~~

14. NOTE TO REVIEWERS: *Revisions proposed at 310 CMR 40.1403(9) create greater flexibility in the public involvement program. Citizens would no longer need to petition that a site be designated a Public Involvement Plan site in order to establish a public information repository or a public comment period. The revisions will provide persons conducting response actions with the opportunity to tailor the Public Involvement Activities for their site to the specific needs of the community without the complete process and requirements associated with developing and implementing a Public Involvement Plan. In addition, the enhanced public involvement activities now available for IRAs and RAMs will be extended to other preliminary response actions.*

The proposed revisions require only that the person(s) conducting the response actions provide a written public comment period and public information repository for documents, if requested. It does not require that the person(s) conducting response actions offer such additional Public Involvement Activities as public meetings and routine fact sheets. However, such additional activities could be requested and, if offered by the person(s) conducting the response action(s), would become part of the additional Public Involvement Activities for the disposal site.

40.1403: Minimum Public Involvement Activities in Response Actions

...

(9) Local officials or ten or more residents of a community(ies) in which a disposal site is located or in any other communities which are, or are likely to be, affected by a disposal site may request an opportunity for public involvement in any Immediate Preliminary Response Action conducted pursuant to 310 CMR 40.040040 or Release Abatement Measure Comprehensive Response Actions conducted pursuant to 310 CMR 40.08000440. Such request shall be made in writing to the person(s) conducting the response action(s) and copied concurrently to the Department.

~~(a) requests concerning Immediate Response Actions shall be submitted to the Department. The Department may itself or may require the party conducting the response action to:~~

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

- ~~1. contact the people making the request and appropriate local officials to identify their concerns about the response action;~~
 - ~~2. provide information to those making the request about the nature and extent of contamination (to the extent known at the time) and about implemented and planned response actions;~~
 - ~~3. provide appropriate opportunities for public comment, which may include but are not limited to, holding a public meeting or providing an opportunity for the public to submit written comments. The Department shall determine the appropriate timeframe for such opportunities, considering the need for timely implementation of response actions; and~~
 - ~~4. prepare a summary of all public comments received, noting which comments have been incorporated, and providing an explanation of why others have not.~~
- ~~(b) requests concerning Release Abatement Measures shall be submitted to the party conducting the response action. Such party shall:~~
- ~~1. contact the people making the request and appropriate local officials to identify their concerns about the response action;~~
 - ~~2. provide information to those making the request about the nature and extent of contamination (to the extent known at the time) and about implemented and planned response actions;~~
 - ~~3. provide appropriate opportunities for public comment, which may include but are not limited to, holding a public meeting or providing an opportunity for the public to submit written comment during a period of time that shall be no shorter than ten calendar days; and~~
 - ~~4. prepare a summary of all public comments received, noting which comments have been incorporated, and providing an explanation of why others have not.~~
- ~~(c) any public meeting held to respond to a request for public involvement shall be held at a time and place convenient to the people requesting the opportunity for comment, and shall be publicized in such community in advance of the meeting.~~
- ~~(d) public comments regarding the Immediate Response Action or Release Abatement Measure shall:~~
- ~~1. be considered and, where relevant and material to the response action, incorporated into plans for the appropriate response actions;~~
 - ~~2. be provided to DEP if a required approval has yet to be issued or a presumptive approval deadline has not expired.~~
- (a) Following the receipt of a written request, the person(s) conducting the response action(s) shall, at a minimum:
1. contact the persons making the request and appropriate local official(s) to:
 - a. identify their concerns regarding the response action(s) and the Public Involvement Activities they desire;
 - b. inform the persons making the request of which Public Involvement Activities the person(s) conducting the response action(s) will provide; and
 - c. provide the name, address, and telephone number of a contact person(s) to address questions about the response action(s);
 2. within sixty (60) days of contacting the persons making the request, provide, pursuant to 310 CMR 40.1403(2), a written notice to such persons and publish a public notice, which include:
 - a. a statement of the Public Involvement Activities that are being conducted at the disposal site, including the location and hours of the public information repository; and
 - b. the name, address, and telephone number of the contact person(s) specified in accordance with 310 CMR 40.1403(2)(c)3.;

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

3. provide the persons making the request with information about the nature and extent of release(s) at the disposal site to the extent known at the time and the implemented and planned response action(s), and
 4. offer the persons making the request additional Public Involvement Activities that include, at a minimum:
 - a. notification of major planning and implementation milestones at the disposal site, as defined in 310 CMR 40.1403(3);
 - b. an information repository in the community(ies) in which the disposal site is located or in any other community(ies) that is, or is likely to be, affected by the disposal site;
 - c. a public comment period that provides for:
 - i. notification of the availability of documents for comment using either a written notice or public notice pursuant to 310 CMR 40.1403(2) or an alternative notice agreed to by the persons making the request and the person(s) conducting the response action(s) no later than the date of submittal of the document to the Department, unless otherwise directed by the Department;
 - ii. a minimum of twenty days (20) from the date of the notice for the submission of written comments; and
 - iii. preparation of a summary of and response to relevant comments within thirty (30) days of the last day of the public comment period, unless an alternative procedure is agreed to by the person(s) conducting the response action(s) and the persons submitting the request, and the inclusion of the summary of and response to comments in the next related response action submittal to the Department and the public information repository;
 - d. public meetings on any Immediate Response Action pursuant to 310 CMR 40.0410 or Release Abatement Measure pursuant to 310 CMR 40.0440.
 5. provide the persons making the request with all Public Involvement Activities requested pursuant to 310 CMR 40.1403(9)(a)4.
- (b) Nothing in this section shall prohibit:
1. the person(s) conducting response action(s) and the persons requesting Public Involvement Activities under this section from agreeing to other procedures for providing public comment, in addition to or in lieu of those specified in 310 CMR 40.1403(9)(b)3.;
 2. the person(s) conducting the response action(s) from providing or the persons making the request from requesting Public Involvement Activities in addition to those required in this section; or
 3. a local official(s) or ten or more residents from requesting a reduction or expansion of the Public Involvement Activities at a disposal site pursuant to this section, or from petitioning for the site to become a Public Involvement Plan Site, pursuant to 310 CMR 40.1404.
- (ec) ~~§~~The public involvement opportunities provided pursuant to this section shall not unreasonably delay implementation of response action(s) at the disposal site.

15. NOTE TO REVIEWERS: *A new section at 310 CMR 40.1403(10) provides procedures for expanding, reducing or terminating Public Involvement Activities.*

40.1403: Minimum Public Involvement Activities in Response Actions

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

...

(12) Public Involvement Activities may be expanded, reduced or terminated as provided below:

(a) Unless otherwise provided in a Public Involvement Plan, a designation of a disposal site as a Public Involvement Plan Site pursuant to 310 CMR 40.1404 and Public Involvement Activities conducted at a disposal site pursuant to 310 CMR 40.1403(9) shall terminate upon receipt by the Department of a final Class A or B Response Action Outcome pursuant to 310 CMR 40.1000.

(b) Local officials, the original parties requesting public involvement opportunities, the person(s) conducting the response action(s) or ten or more residents of a community(ies) in which a disposal site is located or in any other community(ies) which are, or are likely to be, affected by a disposal site may propose a revision to the Public Involvement Activities set forth for a site, including termination. If a revision(s) is proposed, the person(s) conducting the response action(s) shall, pursuant to 310 CMR 40.1403(2), publish a public notice and provide a written notice to the parties on the mailing list for the disposal site, the local Board of Health(s) and Chief Municipal Officer(s) in the community(ies) which the disposal site is located and in any other communities that are, or are likely to be, affected by the disposal site. The notices shall:

1. identify the proposed changes to the Public Involvement Activities;
2. provide a twenty (20) day comment period for the proposed reduction or elimination of the Public Involvement Activities; and
3. state that copies of the proposed changes are available for review in the local information repository.

(c) The person(s) conducting the response actions(s) shall review any comments received and revise the original Public Involvement Plan developed pursuant to 310 CMR 40.1404 or the Public Involvement Activities implemented pursuant to 310 CMR 40.1403(9), as appropriate.

(d) Unless ten or more residents of the community(ies) in which the disposal site is located, or of a community(ies) likely to be affected by the disposal site, respond in writing that they do not want the Public Involvement Activities to be revised, the Public Involvement Activities shall be revised. A letter that sets forth the revised Public Involvement Activities shall be placed in the information repository and concurrently sent to any person(s) who responded to the notices under 310 CMR 40.1403(12)(b).

PROPOSED REVISIONS TO THE PUBLIC INVOLVEMENT PLAN

16. NOTE TO REVIEWERS: *Revisions at 310 CMR 40.1404(1) clarify when adequately regulated sites conducting cleanups under 310 CMR 40.0110 (Federal Corrective Action pursuant to HSWA, RCRA Authorized State Hazardous Waste Program, Solid Waste Management Facilities) are eligible for designation as PIP Sites and for TAGs. In addition, revisions at 310 CMR 40.1401(1) will clarify the points in the MCP process where sites are not eligible for PIP designation.*

The current eligibility threshold for PIP Site designation and TAG Grants is Tier Classification, at which time a Phase I has been completed. Therefore, DEP's practice has been that adequately regulated sites are eligible to be designated PIP Sites and to qualify for TAGs when the site has obtained a level of information equivalent to a Phase I. The proposed changes are intended to identify a level of information available for the site equivalent to a Phase I. The proposal would also make default Tier ID sites,

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

40.1404: Public Involvement Plan Site Designation

(1) The following disposal sites shall be eligible for Public Involvement Plan (PIP) Site designation:

(a) Any disposal site that has been tier classified as either Tier I or Tier II pursuant to 310 CMR 40.0500; shall be eligible for designation as a Public Involvement Plan (PIP) site.

(b) any disposal site that is deemed a default Tier ID site pursuant to 310 CMR 40.0502(1)(a) or (b) where the person conducting response action fails to meet the Tier Classification deadline;

(c) any disposal site at which the response action(s) is being conducted in accordance with 310 CMR 40.0112 and for which a RCRA Facility Assessment has been completed;

(d) any disposal site at which the response action(s) is being conducted in accordance with 310 CMR 40.0113 and for which either a RCRA Facility Assessment or equivalent assessment in accordance with 310 CMR 30.000, the Massachusetts Hazardous Waste Regulations has been completed; or

(e) any disposal site at which the response action(s) is being conducted in accordance with 310 CMR 40.0114 and for which an Initial Site Assessment or equivalent assessment in accordance with 310 CMR 19.00, the Massachusetts Solid Waste Regulations that has been completed.

(2) A disposal site shall not be eligible for designation as a PIP Site if the Department issued or received any of the following, unless the results of an audit by the Department of such submittals or determinations require additional response actions or the subsequent filing of a Tier Classification Submittal or RAO Retraction:

(a) a No Further Action determination letter issued by the Department pursuant to 310 CMR 40.000;

(b) a determination by the Department that the site is exempt from the transition requirements pursuant to 310 CMR 40.0637;

(c) a Class A or B Response Action Outcome Statement pursuant to 310 CMR 40.1000;

(de) a Downgradient Property Status Submittal pursuant to 310 CMR 40.0180;

(ef) an LSP Evaluation Opinion, Consultant of Record No Further Action Statement or PRP No Further Action Statement pursuant to 310 CMR 40.0600; or

(fg) a Waiver Completion Statement pursuant to 310 CMR 40.537.

(23) Petitions shall be submitted to the party responsible for conducting ~~the~~ response actions at the disposal site. For disposal sites where a RP, PRP or Other Person is conducting ~~the~~ response actions, a copy of the petition shall also be sent concurrently to the Department.

(34) Petitions submitted shall:

(a) identify the disposal site to be designated, by name, address, and Release Tracking Number(s) if known;

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

- (b) include a request to designate the disposal site as a PIP Site pursuant to M.G.L. c. 21E, § 14(a) and the Massachusetts Contingency Plan, 310 CMR 40.1404; and
- (c) include the signatures and addresses of at least ten persons signing the petition. These names and addresses shall also be legibly printed so that they can be used to respond to the petition.

17. NOTE TO REVIEWERS: *Revisions at 310 CMR 40.1404(4) clarify that designation of site as a PIP Site is not contingent on the party conducting response actions sending the designation letter to the petitioners. The current regulations state that any Tier Classified site for which a PIP petition is received is eligible for PIP designation and that a letter stating such must be sent to the petitioners. Some people have interpreted this to mean that the site is not deemed to be a PIP Site unless and until the designation letter is sent, which is not the intent. DEP considers any site that meets the eligibility criteria to be a PIP Site, whether or not the designation letter is sent.*

40.1404: Public Involvement Plan Site Designation

(45) Upon receipt of a petition signed by ten or more residents of a municipality in which an eligible Tier I or Tier II disposal site is located, or of a municipality potentially affected by an eligible Tier I or Tier II disposal site, the disposal site shall categorically become a PIP Site. Following PIP designation, the party person(s) responsible for conducting the response action(s) shall inform the petitioners of such designation such site as a PIP site pursuant to 310 CMR 40.1404(6).

(56) All petitioners shall be informed in writing whether or not the disposal site has been designated as a PIP site, within 20 days of receipt of such a petition. If the site is not a classified disposal site and therefore cannot be designated a PIP site, the reason why it has not shall be stated in the response letter. If the Department is not conducting the response action at the disposal site, a copy of the response letter shall be concurrently sent to the Department.

(67) While petitions to designate a disposal site as a PIP site shall be accepted for any disposal site classified as Tier I or Tier II, the submission of such a petition by itself shall not alter the classification of a disposal site made pursuant to 310 CMR 40.0500.

(78) The submittal of a public involvement petition shall not alter the order in which the Department initiates response actions at a disposal site.

18. NOTE TO REVIEWERS: *Revisions at 310 CMR 40.1404(9) and (10) clarify that a new PIP petition is not required for a disposal site if a new reportable release(s) of Oil and Hazardous Material occurs at the site and to require that the individuals on the mailing list be notified of the new release(s).*

(9) When PIP Site designation is terminated pursuant to 310 CMR 40.1403(10), a new PIP petition shall be required to re-designate the disposal site as a PIP Site.

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

(10) A new petition is not required for a disposal site that is currently a PIP Site at which a new reportable release(s) or threat of release(s) of Oil or Hazardous Materials occurs, pursuant to 310 CMR 40.0300. The person(s) conducting the response action(s) at a disposal site shall inform the individuals on the mailing list established for the site of a new release(s) or threat of release(s) using a written notice pursuant to 310 CMR 40.1403(2), unless the release or threat of release is consistent with a release or threat of release which was the subject of a prior notification to the Department.

19. NOTE TO REVIEWERS: Revisions at 310 CMR 1404(11) will allow for withdrawal of a PIP petition by the petitioners. Option 1 would require that the withdrawal request include the signatures of all the original petitioners. Option 2 would require that the withdrawal request include the signatures of a majority of the original petitioners.

Option 1:

(11) A PIP petition may be withdrawn prior to the development of a draft Public Involvement Plan. Withdrawals shall be submitted in writing to the person(s) conducting response actions and shall include the site name, release tracking number, an explanation for the withdrawal, and the signatures of the original petitioners. The person(s) conducting the response action(s) shall within fourteen (14) days of the date of receiving the withdrawal request provide a copy to the Department.

Option 2:

(11) A PIP petition may be withdrawn prior to the development of a draft Public Involvement Plan. Withdrawals shall be submitted in writing to the person(s) conducting response actions and shall include the site name, release tracking number, an explanation for the withdrawal, and the majority of the signatures of the original petitioners. The person(s) conducting the response action(s) shall within fourteen (14) days of the date of receiving the withdrawal request provide a copy to the Department.

20. NOTE TO REVIEWERS: Revisions at 310 CMR 40.1405 (5) and (6) reflect the standard of practice articulated in the PIP policy and in site-specific Public Involvement Plans, and include:

- Revising 310 CMR 40.1404(5) to clarify that a copy of all the documents prepared under the public involvement process must be sent to DEP. The regulations presently identify specific public involvement documents that must be sent to DEP, but the PIP policy states that copies of all the documents prepared under the PIP process must be sent to DEP.
- Revising 310 CMR 40.1405(6) to expand the comment periods for RAMs from 10 to 20 days to be consistent with the comment period for IRAs.
- Revising 310 CMR 40.1405 to include procedures for terminating and modifying PIP Plans.
- Revising 310 CMR 40.1405(6) to clarify that during a public comment period at a PIP Site, response actions that are the subject of the comment period may not proceed until the comment period has run unless otherwise agreed to in the PIP Plan. This is to ensure that comments are considered and incorporated, if appropriate, into further response actions.

Although 310 CMR 40.1405 contemplates that the petitioners may request public meetings be held, currently the regulations specifically require only one public meeting be held when the disposal site is initially designated as a PIP Site. This language has been interpreted as precluding the petitioners from requesting additional public meetings later in the process. DEP wishes to clarify this misconception, but also seeks comment on whether requiring such additional public meetings should be limited to when specific milestones are reached.

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

40.1405: Additional Public Involvement Activities Required for Public Involvement Plan Sites

- (1) Public Involvement Activities undertaken at PIP ~~s~~ Sites are those taken in addition to the Public Involvement Activities required for all disposal sites and are designed to involve the public in decisions regarding response actions.
- (2) Public Involvement Activities conducted at PIP ~~s~~ Sites shall focus on the community(ies) in which the disposal site is located and shall include other communities which are, or are likely to be, affected by the disposal site.
- (3) Concerns, information, and comments from the public about the disposal site shall be solicited, considered, addressed and, where relevant and material to the response action, incorporated into decisions regarding response actions at the disposal site.
- (4) Public Involvement Activities required at PIP ~~s~~ Sites shall pertain to those response actions conducted after the submission of the PIP petition, except at disposal sites where response actions beyond Phase I are conducted prior to classification. At disposal sites where response actions beyond Phase I are conducted prior to classification, Public Involvement Activities shall pertain to all response actions conducted, provided that the PIP petition is submitted received within thirty 20 (30) days of publication of the ~~legal-public~~ notice required in ~~310 CMR 40.1403(6)~~ 310 CMR 40.0703(8).
- (5) Upon designation of a disposal site as a PIP ~~s~~ Site:
 - (a) within ~~8060~~ days of receiving designation as a PIP petition for an eligible disposal site a draft site-specific Public Involvement Plan shall be prepared, and a public meeting shall be held to present the draft Public Involvement Plan, solicit public comment on the draft Public Involvement Plan, and provide information about disposal site conditions. This public meeting shall be held at a time and location convenient to the affected public. Residents of the potentially affected community(ies) shall be informed of the public meeting by the following activities:
 1. public notice pursuant to 310 CMR 40.1403(2), shall be published in a form established by the Department for such purpose for at least fourteen (14) days prior to the meeting ~~a legal notice shall be published in a form established by the Department for such purpose, and a press release shall be issued to a newspaper which circulates in the community(ies) in which the disposal site is located and in newspapers which circulate in any other communities which are, or are likely to be, affected by the disposal site;~~ and
 2. a copy of the ~~legal-public~~ notice announcing the public meeting shall be mailed to each petitioner, and the Chief Municipal Officer(s) and Board of Health(s) in the community(ies) in which disposal site is located and in any other community(ies) ~~that is which are~~, or ~~is are~~ likely to be, affected by the disposal site;
 - (b) the draft Public Involvement Plan shall be made available for public comment for a minimum of twenty (20) days following the public meeting to present it;
 - (c) ~~the~~ Public Involvement Plan shall be finalized within thirty (30) days of the close of the public comment period to reflect public comments received on the draft Public Involvement Plan;
 - (d) ~~A~~ a summary of comments received on the draft Public Involvement Plan shall be developed, noting comments that have been incorporated and providing an explanation for why others have not been incorporated. The copy of the response to

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

comments and the final Public Involvement Plan shall be made available in the information repository(ies) established for the disposal site pursuant to 40.1405(6)(i); ~~(de) if the Department is not conducting the response action at the disposal site, then a copy of the draft Public Involvement Plan, legal notice and press release announcing the public meeting, all comments received on the draft Public Involvement Plan, response to comments, and the final Public Involvement Plan copies of all the documents related to the public involvement process shall be submitted to the Department upon their availability, if the Department is not conducting the response action(s) at the disposal site;~~ and
(ef) the Public Involvement Plan shall be implemented throughout the response action.

- (6) A Public Involvement Plan shall ensure, without limitation that:
- (a) interviews are conducted to identify local concerns and sources of information ~~are identified~~ so that they can be addressed during the response action(s) process, and so that the Public Involvement Plan reflects the nature and level of relevant public interest;
 - (b) methods for informing the public about the response action(s) and public involvement processes are provided, including, but not limited to, sufficient notice about specific milestones during the response action(s), notification of the public of a public meeting a minimum of fourteen (14) days in advance of the meeting;
 - (c) a contact for the person(s) conducting the response action(s) is provided, including that person's name, address and phone number;
 - (d) disposal site background information is provided, including, but not limited to, a site description and history, material environmental assessment history, and relevant public involvement history;
 - (e) opportunities to comment on the response action(s) are provided by holding a minimum twenty (20) day comment period on all submittals made following PIP designation required pursuant to 310 CMR 40.0400 and 40.0800, with the following qualifications:
 - 1. any public comment period may be extended, if requested by the public, for a minimum of an additional twenty (20) days;
 - 2. Phase II Scopes of Work, IRA Plans, RAM Plans, and sampling plans shall be subject to additional comment periods if significant changes are proposed which substantially alter or expand the previous Phase II Scope(s) of Work, IRA Plan(s), RAM Plan(s), or previous sampling plan(s);
 - 3. comment periods on Immediate Response Action Plans may be reduced or eliminated by the Department if it would delay the timely implementation of the remedial action;
 - 4. ~~comment periods on Release Abatement Measures to be performed after Tier Classification shall be ten days, and comments shall be simultaneously submitted to the Department if the Department is not conducting the response action)~~ and
 - 54. comment periods for reports concerning inspection and monitoring of remedial actions and status reports are not required unless specifically requested by the public in the process of developing or revising a Public Involvement Plan;
 - (f) unless otherwise specified in the Public Involvement Plan or in this section, response actions that are the subject of the public comment period may not proceed until the close of the public comment period;

PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN

(fg) public comments regarding the disposal site are considered, and where relevant and material to the response action, incorporated into decisions regarding response actions;

(gh) within 60 days of the close of the public comment period, a summary is prepared of all public comments received during any comment period, and that summary contains the comments received, noting which comments have been incorporated and providing an explanation of why others have not;

(hi) Public Involvement Activities are undertaken throughout the response action and that a schedule is developed for conducting these activities;

(ij) an information repository(ies) is established in the community(ies) in which the disposal site is located and in any other communities which are, or are likely to be, affected by the disposal site, with a location and hours that are convenient to the public;

(jk) a mailing list of all individuals who ask to receive information about the disposal site is established that shall also include;

1. the Chief Municipal Official;

2. the Board of Health; and

3. the Department;

(kl) procedures that are consistent with 310 CMR 40.1403(10) are established for revising the Public Involvement Plan whenever appropriate during the response action process. ~~(e.g., based on changes in the level of public interest in the disposal site, changes in the nature of response actions, or other factors).~~

(7) The Public Involvement Activities in the Public Involvement Plan may be modified following the procedures in 310 CMR 40.1403(12).